

English Commercial Court Rules on Enforcement of Section 1782 Order



It has been a couple of weeks since I wanted to report on a judgment by the English Commercial Court which ruled on the enforcement of 28 U.S.C. Section 1782 (**Section 1782**)[\[1\]](#). [As we discussed before](#), Section 1782 is a U.S. Federal Statute that allows a litigant before a “*foreign or international tribunal*” outside the United States to apply to the U.S. district courts to obtain discovery against a person or entity residing or found in the district where the application is sought.

The case at hand concerns several multijurisdictional disputes between fertiliser companies (*Eurochem Trading GmbH* and its mother company *JSC MCC Eurochem* (together referred to as ***Eurochem***), on the one hand, and *Drey Moor Fertilisers Overseas PTE Ltd* (***Drey Moor***), on the other hand). Those multijurisdictional disputes are taking place before courts in the British Virgin Islands and in Cyprus as well as in two arbitration proceedings in London. The claims concern alleged bribery perpetrated by *Drey Moor* and targeting senior employees of *Eurochem*.

On 18 May 2017, *Eurochem* filed a Section 1782 application

before the United States District Court for the Middle District of Tennessee in order to oblige one of Drey Moor's senior employees (**Mr. Chauhan**) to disclose documents in his possession and to provide evidence by way of deposition[2]. The application also made clear that the evidence so obtained would be used in the court proceedings in the British Virgin Islands and in Cyprus as well as in one of the arbitration proceedings.

After several months of litigation (due to strategic delays caused by Drey Moor), the U.S. court handed down an order (the **1782 Order**) concluding that Mr. Chauhan should provide testimony and produce documents in his possession.

However, Drey Moor applied for an injunction before the English Commercial Court[3] in order to restrain Eurochem from enforcing the 1782 Order. More particularly, Drey Moor did not seek to prevent the enforcement of the 1782 Order for all the time. It accepted that Eurochem may depose Mr. Chauhan but only at a time when this will not affect his preparation in the arbitration proceedings. As explained by Drey Moor's lawyer, if the 1782 Order were to be enforced it would constitute unconscionable interference with the arbitral proceedings because *"the disclosure and deposition process was 'likely to be burdensome for Mr Chauhan at a time when our client would wish to have his energies focused on assisting it in the defence of the London arbitration'"*.

On 24 August 2018, the English Commercial Court dismissed Drey Moor's request.

Citing previous English case law on Section 1782 ((i) *South Carolina Insurance Co v. Assurantie Maatschappij "De Zeven Provinciën" N.V.*; (ii) *Omega Group Holdings Ltd v. Kozeny*; and (iii) *Benfield Holdings Ltd v. Richardson*), the English Commercial Court pointed out that, although it *"has a legitimate interest in granting an injunction to protect the fairness and integrity of its own proceedings and of London*

arbitration proceedings over which it has a supervisory jurisdiction“, it has, however, “*no legitimate interest in policing a party’s attempt to obtain documents or evidence in foreign proceedings*“. The English Commercial Court also highlighted that the 1782 Order obtained in the United States, had twice been reaffirmed after exhaustive argument in which Drey Moor (through Mr. Chauhan) participated fully and that it would amount to a breach of comity for the English Commercial Court to say that the United States court’s conclusions were wrong.

Given the facts at hand, the English Commercial Court conceded that in the absence of an injunction the timing of enforcement of the 1782 Order will have an impact on Drey Moor’s preparation for the hearing in the London arbitrations. However, it made it clear that that was entirely a problem of Drey Moor’s own making (*i.e.*, since Drey Moor had been successful in delaying the final determination of the Section 1782 application in the United States for over a year by instituting numerous appeals, Drey Moor could not complain that its enforcement would now come at an inconvenient time).

[1] Thank you Geert Van Calster for sharing a [Linkedin post](#) on this case on 27 November 2018. It reminded me that it was more than time for me to finalize this article.

[2] The application was made before the United States District Court for the Middle District of Tennessee as Mr. Chauhan was resident in that district.

[3] The injunction was filed before the English Commercial Court since London was the seat of the arbitration proceedings.